

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

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In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*

Debtors.¹

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In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

PUERTO RICO ELECTRIC POWER AUTHORITY
("PREPA"),

Debtor.

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PROMESA
Title III

Case No. 17 BK 3283-LTS

(Jointly Administered)

PROMESA
Title III

Case No. 17 BK 4780-LTS

Relates to Debtor PREPA Only

**DECLARATION OF GERARDO JOSE PORTELA FRANCO IN SUPPORT OF REPLY
TO OBJECTIONS TO URGENT JOINT MOTION OF THE FINANCIAL OVERSIGHT
AND MANAGEMENT BOARD FOR PUERTO RICO AND THE PUERTO RICO
FISCAL AGENCY AND FINANCIAL ADVISORY AUTHORITY FOR ENTRY OF
INTERIM AND FINAL ORDERS (A) AUTHORIZING POSTPETITION SECURED
FINANCING, (B) GRANTING PRIMING LIENS AND PROVIDING SUPERPRIORITY
ADMINISTRATIVE EXPENSE CLAIMS, (C) MODIFYING THE AUTOMATIC STAY,
(D) SCHEDULING A FINAL HEARING, AND (E) GRANTING RELATED RELIEF**

¹ The Debtors in the jointly-administered Title III cases, along with each Debtor's respective Title III case number listed as a bankruptcy case number due to software limitations and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (iv) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); and (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747). (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations.)

I, Gerardo Jose Portela Franco, declare as follows:

1. I am the Executive Director of the Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF”). I submit this declaration in support of the Reply to the Objections filed in response to the *Urgent Joint Motion of the Financial Oversight and Management Board for Puerto Rico and the Puerto Rico Fiscal Agency and Financial Advisory Authority for Entry of Interim and Final Orders (A) Authorizing Postpetition Secured Financing, (B) Granting Priming Liens and Providing Superpriority Administrative Expense Claims, (C) Modifying the Automatic Stay, (D) Scheduling a Final Hearing, and (E) Granting Related Relief* (the “Motion”). I, or others working under my direction, have personal knowledge of the matters stated herein, and, if called and sworn as a witness, could testify competently thereto.

2. As AAFAF’s Executive Director, I am responsible for overseeing AAFAF’s work on behalf of the Commonwealth of Puerto Rico and its separate entities, including PREPA. AAFAF was created “for the purpose of acting as fiscal agent, financial advisor, and reporting agent of all entities of the Government of Puerto Rico and to assist such entities in facing the serious fiscal and economic crisis that Puerto Rico is currently undergoing.” Act No. 2-2017 (AAFAF Enabling Act) § 5(a). PREPA is one of the governmental entities that AAFAF is responsible for assisting in the ongoing financial crisis. In that role, AAFAF has been working with PREPA to secure the financing PREPA needs to operate and to provide electricity to the people of Puerto Rico after the devastation wrought by Hurricanes Irma and Maria. AAFAF also has been working with the Government (as defined below) regarding the Loan Facility (as defined in the Motion), although Government approval for the Loan Facility ultimately is vested by statute in the Secretary of the Treasury.

3. PREPA is a public corporation and governmental instrumentality of Puerto Rico

“created for the purpose of conserving, developing and utilizing, and aiding in the conservation, development and utilization of water and energy resources of Puerto Rico, for the purpose of making available to the inhabitants of the Commonwealth, in the widest economic manner, the benefits thereof.” Act No. 83-1941 (PREPA Enabling Act) § 6. I understand that PREPA is responsible for distributing nearly all the electric power in Puerto Rico and thus, plays a critical role in all facets of life in Puerto Rico, including the economy, safety, and public health.

4. While PREPA has long faced serious issues regarding its performance reliability and financial situation, these issues were significantly exacerbated by Hurricanes Irma and Maria. The devastation in the aftermath of these hurricanes was unprecedented. As someone who lived through the hurricanes, I know from personal experience how much havoc and disruption they wreaked on every aspect of and disrupted every aspect of Puerto Rico’s life and left many people without power for months. Many people are without power still.

5. Within the first week after Hurricane Maria’s landfall and devastation, the Government engaged the Federal government and its agencies with respect to the emergency funding that could be available under federal programs to support restoration of electricity to Puerto Rico. The Federal government provided emergency support for restoration and recovery expenditures. PREPA’s revenues, however, were disrupted and PREPA’s cash position continued to deteriorate because of the Hurricanes. While discussions with the Federal agencies progressed, the challenges to PREPA’s cash position and ability to fund its operations on an uninterrupted basis have continued to mount.

6. It has been and remains the Government’s preference that PREPA obtain affordable financing on appropriate terms from a party other than the central government of

Puerto Rico (the “Government”).² As described below, the Government attempted to persuade the United States of America to lend directly to PREPA—but has not yet been successful. Because an operating loan has not been offered to PREPA from the United States Government, the Government believes at this moment it must take steps to provide PREPA with an emergency loan in an amount sufficient to ensure that PREPA can continue to operate without material interruption, which will protect the well-being of Puerto Rico’s citizens and benefit all of its other stakeholders.

7. The Government has been advised by PREPA’s management that PREPA needs significant near-term liquidity so as to continue the projected delivery of power to business and residents on the Island and in order to avoid serious and severe disruption to its operations. PREPA provided AAFAF with the necessary liquidity projections it is best able to predict at this time to have the cash reserves necessary to meet those essential expenses that must be paid to keep the utility running at current projected levels. Any disruption of electric power to the Island would represent a devastating set back to the Government’s efforts to date to recover from its financial and economic crises exacerbated by Hurricane Maria’s aftermath.

AAFAF’s Efforts to Obtain Direct Loans to PREPA from U.S. Government

8. AAFAF, on PREPA’s behalf (and together with PREPA), has repeatedly requested that the United States government provide loans directly to PREPA to address its dire liquidity needs. Since October 2017, I have had dozens of email communications and phone calls with officials at the United States Treasury Department and the Federal Emergency Management Agency (“FEMA”) requesting that the United States provide funds or a loan directly to PREPA under the Community Disaster Loan (“CDL”) program. It was, and continues

² By “Government” I am referring to the Commonwealth of Puerto Rico’s central government, and excluding public corporations, independent agencies, the Fiscal Oversight and Management Board and any municipalities.

to remain, the preference of the Government to obtain CDL funds for PREPA because it is the Government's understanding that such funds, which are designed precisely for disaster situations, are often made on favorable terms to borrowers and are frequently forgiven depending upon the circumstances.

9. On October 30, 2017, FEMA requested financial information related to PREPA. As early as November 8, 2017, AAFAF began providing detailed information on a rolling basis to the U.S. Government. Throughout this process, I repeatedly expressed the urgency of the matter to the U.S. Treasury Department and FEMA. For example, I explained to them the dire state of PREPA's liquidity crisis in several emails, including on December 9, 13, and 19, 2017. In December 2017, the Federal Government communicated to AAFAF concerns about making a direct loan to PREPA. On January 9, 2018, I was officially informed that no direct loan would be available to PREPA. *See Motion, Exhibit F, Dkt. No. 549-6, No. 17-BK-4780-LTS.* As stated in the January 9, 2018 letter, although PREPA "applied for a CDL to cover operating expenditures," "[t]he current posture of the Federal Government is to disburse CDL program financing directly to the Commonwealth, which could then sub-lend to its various entities (including PREPA and PRASA)...." *Id.* Since then, the U.S. Treasury Department and FEMA have not indicated a willingness to reconsider their position with regard to direct lending to PREPA nor have they approved a CDL to the Commonwealth for lending to PREPA. In sum, despite the ongoing requests AAFAF has made for direct CDL funds for PREPA, to this point, neither the U.S. Treasury Department or FEMA offered to make a direct loan or presented terms on which they would be willing to provide funds directly to PREPA.

10. Once AAFAF realized it was unlikely that the United States government would provide funds directly to PREPA in time to address PREPA's liquidity crisis, AAFAF sought to

obtain financing for PREPA that would provide adequate liquidity to PREPA and ensure that there would be no interruption in PREPA's operations. The process for soliciting such financing from the private sector did not commence earlier because AAFAF and PREPA were working to obtain financing from the United States government (which was and remains the preferable option from the perspective of both the Government and PREPA) and believed that expending all financing efforts on that process was the most prudent course.

11. After considering PREPA's needs and given the lack of other available options, the Government decided to provide an emergency financing facility to PREPA on the terms reflected in the Finance Motion, which include no interest for the first six months, no fees of any kind in connection with the Facility, and no prepayment penalties in the event that the Facility is refinanced. AAFAF, consistent with its statutory duties, assisted both the Government and PREPA, in accordance with their common interest in serving the people of Puerto Rico. The proposed Facility balances PREPA's urgent need for liquidity with the Government's considerations regarding its own finances by requiring that the Facility be secured with priming liens and a superpriority claim. Inclusion of these terms was an important premise upon which the Secretary of Treasury of Puerto Rico is relying on to approve the Facility, and I understand that the Financial Oversight and Management Board also required these terms be included for the Government's protection as a lender. In addition, in order to protect the liquidity position of the Government, the commitment may be terminated upon 60 days' notice if the Government's liquidity is projected to fall below \$800 million.

Amounts Purportedly Owed to PREPA By Government Entities

12. I understand that certain creditors contend that "government entities" owe money to PREPA that would address its short-term liquidity issues, if collected, and that the

Government is somehow refusing to pay money owed to PREPA. Those assertions are not correct for a number of reasons.

13. First, AAFAF has worked with the Government to facilitate the payment of substantial sums for services to PREPA, including prepayments to be credited against future electric services for the current fiscal year. On January 25, 2018, PREPA and the Government entered into a Memorandum of Understanding (“MOU”) pursuant to which the Government agreed to pay approximately \$50.9 million to cover estimated future energy liabilities for Government agencies for the time period of January 1, 2018 to June 30, 2018 (the remainder of fiscal year 2017-2018) in exchange for a 1% discount from PREPA. On January 29, 2018, the Government paid PREPA approximately \$74.6 million, including approximately \$50.9 million under the MOU, with the remaining \$23.7 million reflecting undisputed amounts owed to PREPA for services rendered between July and December of 2017.

14. AAFAF has also assisted PREPA by issuing 27 letters to certain public corporations and Department of Treasury instructing them to take steps to pay undisputed amounts due to PREPA and to foster reconciliation efforts. AAFAF is working with PREPA to meet with other public corporations to reconcile past due amounts and facilitate payments.

PRASA

15. I understand that certain creditors have asserted that PREPA could increase its liquidity if PRASA paid PREPA various receivables purported to be owed to PREPA. It is my understanding that these public corporations owe the other substantial amounts of money that could potentially be offset. The entities are starting a process at the behest of AAFAF to address the balances owed. The outcome of this process may ultimately yield a payment from PRASA to PREPA, but the amount of any such payment will have to take into account the fact that

PRASA—which plays a critical role in Puerto Rico’s public health, safety and economy—already has dangerously low liquidity levels. For example, as recently publicly disclosed, as of December 31, 2017, PRASA had approximately \$27 million available in its “Current Expense Fund.”³ As recently disclosed in the fiscal plan PRASA submitted to the Financial Oversight and Management Board, PRASA has significant financial needs and is projected to need approximately \$200 million in financial support and aid to ensure its continued viability.⁴

HTA

16. I understand that certain creditors have asserted that PREPA could increase its liquidity if the Puerto Rico Highways and Transportation Authority (“HTA”) were to pay PREPA various receivables purported to be owed to PREPA. It is my understanding, however, that the alleged receivables are not current and HTA does not have a budgeted amount to pay extremely aged, disputed receivables. HTA is no longer receiving the tax and fee revenues previously allocated to it by the Commonwealth. Toll revenues have been severely reduced as a result of Hurricane Maria. Hurricane Maria also added hundreds of millions of dollars in immediate construction needs to HTA’s already substantial list of necessary construction projects to keep the transportation system functioning. As a result of its perilous financial situation, HTA is already critically dependent on Commonwealth financial support from the Commonwealth.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in New York, New York on February 3, 2018.

³ See *Summary of Bank Account Balances for the Government of Puerto Rico and Its Instrumentalities* at 14 (Jan. 19, 2018), available at <http://www.aafaf.pr.gov/assets/aafaf-bankaccountbalancesgovernmentofpr.pdf>.

⁴ See *PRASA Draft Revised Fiscal Plan* (Jan. 24, 2018), available at <http://www.aafaf.pr.gov/assets/prasa-revisedfiscalplan-01-24-18.pdf>.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in New York, New York on February 3, 2018.



Gerardo Jose Portela Franco